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Sentence

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

04 CR 356 (KBF)

5 HAROON RASHID ASWAT,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 October 16, 2015  
11:00 a.m.

10 Before:

11 HON. KATHERINE B. FORREST,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the  
Southern District of New York

16 SHANE T. STANSBURY

17 JOHN P. CRONAN

IAN P. MCGINLEY

18 Assistant United States Attorney

19 PETER E. QUIJANO

Attorney for Defendant Aswat

20 ANNA N. SIDERIS

21 Attorney for Defendant Aswat

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1 (Case called)

2 MR. STANSBURY: Shane Stansbury, John Cronan and Ian  
3 McGinley, for the government. And we've also got several  
4 agents and a paralegal at the table.

5 THE COURT: All right. Welcome. Good morning.

6 MR. QUIJANO: Good morning, Judge Forrest.

7 For defendant Haroon Aswat, Peter Quijano and Anna  
8 Sideris. Also present in the front row is Jacob Bineman, a  
9 barrister from the United Kingdom, who was one of Mr. Aswat's  
10 attorneys.

11 THE COURT: Is he with the same firm --

12 MR. QUIJANO: Yes, he is, your Honor, or rather he was  
13 at the time of the representation.

14 THE COURT: All right. Thank you.

15 MR. QUIJANO: Mr. Aswat is present and ready to  
16 proceed.

17 THE COURT: All right. Thank you and welcome all of  
18 you.

19 We're here for the sentencing of Mr. Aswat and I want  
20 to start by setting forth for the record the materials that  
21 I've received in connection with this proceeding and make sure  
22 I have those materials which you folks think I should have. If  
23 I'm missing anything please let me know.

24 I've received from the defense two submissions,  
25 actually, three submissions. I've received another one this

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1 morning. One of October 3, 2015, that's the corrected version  
2 of the sentencing submission. The second of October 13, 2015.  
3 And then I received a reply to the government's sentencing  
4 memorandum and it's dated 10/15/15. So that was just yesterday  
5 and I read it this morning. So, it's actually dated the 14th.  
6 It was filed on the 15th and I read it on the 16th.

7 Now those submissions are accompanied by a number of  
8 letters and I want to mention those as well because a couple of  
9 them play a particularly important role here. Not only the  
10 letters from Mr. Aswat's family, there are letters from his  
11 aunts, his uncle, a cousin, several siblings, several friends,  
12 two friends from South Africa, a chaplain from one of the  
13 hospitals in which he was residing in for a period of time.  
14 And then also -- and these are the two that I wanted to mention  
15 in particular -- a letter from Ms. Garret Pierce that's dated  
16 October 5, 2015, and it's a very extensive letter, quite  
17 detailed and also the detailed report of Dr. Wadman,  
18 W-A-D-M-A-N, from the West London Mental Health Center and  
19 that's dated March 26, 2014. Both of those letters I want to  
20 have you folks understand that I've read those. I've read all  
21 the letters quite carefully. Those were so detailed they  
22 really took a couple of readings to take them in but they're  
23 very detailed.

24 I've also received a PSR -- that's a presentencing  
25 investigation report -- that's dated June 18, 2015. The PSR

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1 sets forth an offense level of 37 and a criminal history  
2 category of six. We'll talk about that in a moment. The PSR  
3 will be made part of the record in this matter and filed under  
4 sealed. If an appeal is taken, then counsel on any appeal can  
5 have access to the PSR without any need for further application  
6 to the Court.

7 I've also received a submission from the government  
8 that's dated October 9, 2015. That submission also has  
9 attachments. It has two attachments. In particular, a  
10 statement from the Department of Justice relating to the  
11 extradition proceeding and also one relating to various  
12 terrorism cases. Both sides spent time in their submissions  
13 talk about sentencing proceedings and other terrorism cases and  
14 there was an appendix that did that in the government's  
15 submission.

16 Now, is there anything that you folks think I should  
17 have that I've not mentioned?

18 MR. STANSBURY: No, your Honor. That covers it.

19 MR. QUIJANO: Not from the defendant, your Honor.  
20 Thank you.

21 THE COURT: All right. I then will move on to the  
22 next piece which is let me just ask you, Mr. Quijano, have you  
23 had an opportunity to review the PSR with Mr. Aswat?

24 MR. QUIJANO: We have, your Honor.

25 THE COURT: Do you or Mr. Aswat have any modifications

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1 to the PSR?

2 MR. QUIJANO: No, your Honor.

3 THE COURT: Does the government have any objections or  
4 modifications to the PSR?

5 MR. STANSBURY: Your Honor, we just noticed a couple  
6 of typos. It appears that paragraph 31 at the very end of the  
7 paragraph states that he was subsequently received training in  
8 Afghanistan in 2011. I believe that should read "2001".

9 THE COURT: Yes. I agree with that change.

10 MR. QUIJANO: I agree.

11 THE COURT: All right. Well, that change shall be  
12 made and I think that's an important change.

13 MR. STANSBURY: And then at paragraph 82 where it says  
14 "guideline provisions" I think this is just an extra word in  
15 the second line it says the guideline imprisonment range is 360  
16 months to zero life.

17 THE COURT: Right. The word "zero" should be struck.

18 Mr. Quijano, do you agree?

19 MR. QUIJANO: Of course, your Honor.

20 THE COURT: Then that word shall be struck from  
21 paragraph 82.

22 All right. The Court then does adopt the factual  
23 findings of the PSR. It's not my practice nor would it be  
24 appropriate to adopt the recommendation necessarily. The Court  
25 can take that into consideration but that's not one of the

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1 findings that's adopted and upon which the Court specifically  
2 relies in terms of its ultimate sentence.

3 Let me just make a couple of comments about the  
4 guidelines calculation so that we can have a discussion about  
5 it. It actually in some ways impacts with a little bit of an  
6 odd situation here. The guidelines are grouped. They are the  
7 result of a grouping because there are two counts of conviction  
8 here, both of which relate to the same conduct which is the  
9 conspiracy to provide material resources and support to a  
10 foreign terrorist organization and then a substantive crime for  
11 the same thing.

12 That in turn relates to the Glide, Oregon training  
13 camp, if you will, and the conduct associated with that. So  
14 they are grouped together under guidelines provision Section  
15 3D1.2 because they essentially are the same criminal conduct  
16 and the same harm. And then there's a necessary series of  
17 steps that one goes through to come up with the guidelines which  
18 is to turn immediately for that particular crime which is the  
19 statutory crime to guidelines provision 2M as in "man" 5.3  
20 which is a guidelines provision that doesn't require any by  
21 analogy consideration by the court actually on its face  
22 directly applicable to this crime.

23 That starts the business base offense level off at 26.  
24 And I think there's also no doubt, nor could there be under the  
25 Lynn Stewart case and other cases that the terrorism

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1 enhancement here does apply. And that automatically would  
2 under 3A1.4A add 12 levels and that's appropriately added here  
3 for the crime for the acts that underlay the crime and for the  
4 and the provision itself.

5 Then there's a specific offense characteristic related  
6 to firearms and that adds two. But the 2M5.3 plus 12 which are  
7 Congressional requirements through the guidelines, if you will,  
8 it's not a minimum, but through the guidelines which Congress  
9 has authorized there to be the guidelines and Congress  
10 authorizes amendments to the guidelines, you start off under  
11 any scenario really 38. That is odd because 38 is above what  
12 would be the statutory maximum for the crime which is ten  
13 years. So each count carries an independent ten years maximum.  
14 Now they are separate crimes, Count Five and Count Six are  
15 separate. But there is the oddity here which I simply note so  
16 that some day maybe somebody can fix the oddity which is we've  
17 got two congressional pronouncements which are intentioned with  
18 one another. One is that the crime of providing material  
19 resources and support to terrorists carries a statutory maximum  
20 of ten years by statute but that the sentencing guidelines  
21 which are ultimately approved by Congress in terms of amendment  
22 thereto and the initial authorization therefore, would put the  
23 minimum guidelines higher than anything close to the statutory  
24 maximum.

25 Here, when you take the enhancements into account when

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1 you also adjust for acceptance of responsibility you end up  
2 here in our case with an on offense level of 37. That would be  
3 true for one count or for two counts because of the grouping.  
4 And so whether it was one count or two counts for the guideline  
5 is irrelevant under the guidelines calculation, insofar as  
6 that's concerned it would be still 37. The criminal history  
7 category under the 3A1.4 is increased to six for all terrorism  
8 related crimes and so we end up at 37 and six which is 360  
9 months to life.

10 Now for a single count that is what the guidelines  
11 would be. But there's a ten-year statutory maximum for a  
12 single count of ten years. Under the guidelines 5G1.2 the  
13 Court in this kind of situation where there are maximums which  
14 are together less than the guidelines, one then runs the  
15 sentences consecutively. And that would mean that the  
16 guidelines which are guidelines are 240 months which is 20  
17 years which is Counts Five and Count Six. So the guidelines  
18 are 20 years. So there's no minimum here. I just wanted to  
19 point out the oddity in the statute. I do find that the  
20 guidelines are appropriately calculated at 37 and six but then  
21 reduced down to 240 months due to the maximum statutory penalty  
22 which can be imposed for the crimes of conviction. So there's  
23 sort of an analytical disconnect, if you will that I wanted to  
24 mention.

25 Would anybody like to comment on that or does anybody



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1 disagree with the calculation?

2 MR. QUIJANO: I do not disagree. I will be commenting  
3 on it in a few moments. I can wait until then.

4 THE COURT: All right. Anything from the government?

5 MR. STANSBURY: No, your Honor. We agree with the  
6 calculation.

7 THE COURT: All right. Then let's then go on and the  
8 way that I would like to handle things is it to have the  
9 government speak and then Mr. Quijano. And then certainly give  
10 Mr. Aswat an opportunity to address the Court if he would like  
11 to do so before sentence is imposed.

12 Let me preview this by telling you what I'm struggling  
13 with and I'll go into this more now but let me give you sort of  
14 an overview. I don't think it will surprising. I think that  
15 in effect it's the two pictures that I'm getting of the  
16 defendant.

17 There is one picture -- and this is the place where  
18 the two letters come into play in which the Court has really --  
19 I thought were very, very thoughtfully done and read very  
20 closely and tell me a fair amount about people who spent a lot  
21 of time with the defendant over time, over a period of years.  
22 And the two pictures are on the one hand there's a very young  
23 man who is 21-years-old. He gets involved with Abu Hanza, is  
24 very close to Abu Hanza. He is not just a listener. He is  
25 accompanying Abu Hanza here and there for several years. And

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1 in that connection he ends up in Glide, Oregon. We'll go into  
2 more of that in detail little bit later.

3 He then comes back from Glide -- actually, from  
4 Seattle. He withdraws from hanging out with Abu Hanza. I  
5 could combine that then with skip to the life in South Africa  
6 arrested and his family has said that he's a very gently  
7 person. He was struggling clearly with some mental health  
8 issues at one point in time. That comes through not so much  
9 from the family at all but from the submissions from the two  
10 letters that I mentioned and some other material. So I've got  
11 one picture of a fellow who was involved on the, what you call  
12 religious inspirational aspects of Glide and of that aspect of  
13 the preparing for jihad.

14 And then I have another picture which is he didn't  
15 just withdraw and leave the conduct with Abu Hanza. He in fact  
16 followed that by subsequently -- and this was I think  
17 critical -- going to Afghanistan participating, being trained  
18 at the Al Farouq training camp and then going off to South  
19 Africa. And so the question is is the fact that he was not  
20 involved in any other terrorist events after he was arrested,  
21 after the events of conviction a matter of timing of when he  
22 was arrested and was he -- I mean, this is in terms of  
23 character now, right? The crimes of conviction are what we're  
24 focused on as the crimes conviction. But as the Court tries to  
25 make an assessment of character I think is this guy a guy who

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1 was really dangerous? Or was this guy a guy who is a young kid  
2 who was sorely misled and has cleaned himself up and gotten the  
3 kind of treatment and support services that he needs to really  
4 change things? And so it's two different make pictures.

5 And that picture is what I'm struggling with in terms  
6 of whether or not I would go below 20 years. And I will tell  
7 you so that, Mr. Quijano, you can address this very clearly,  
8 I'm concerned that in this kind of case the lack of clarity  
9 works against a lower sentence rather than in favor of it  
10 because of the inability to know. I mean, I don't want this  
11 guy to be released into -- so I wanted to just give you sort of  
12 the picture of what I'm struggling with based upon the  
13 submissions. I know we're starting with a premise where this  
14 defendant has already spent over a decade in jail for this  
15 crime and other facilities associated therewith. So that's  
16 where we're starting. We're starting where he served 120  
17 months plus I believe. And so it's really sort of what in  
18 excess, if anything, of that amount.

19 All right. So why don't we start with the government  
20 here.

21 MR. STANSBURY: Your Honor. Thank you for that  
22 preview, your Honor, and I want to get to that tension in just  
23 a moment. But just to sort of, to start out I think I'll start  
24 out with the same place your Honor did which is there is a  
25 tension between what the guidelines call for and what the

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1 guidelines actually are. So we end up with a 20-year sentence  
2 being called for the guidelines which otherwise would be 360 to  
3 life. So I would submit that we should keep in mind what the  
4 baseline is, this 360 to life, were it not for the statutory  
5 maximum.

6 We think a 20-year sentence is perfectly appropriate  
7 here. And it captures all of those issues that your Honor  
8 started to get into. It's a complicated individual and I think  
9 the government is not going to come up here and say that he was  
10 as culpable as his co-defendants but we do believe that the  
11 severity of the offense, the nature and circumstances of the  
12 offense, along with the need for specific deterrence and  
13 general deterrence and the need to protect the public call for  
14 that 20 year sentence.

15 I'll start with the Glide, Oregon camp. That's really  
16 the heart of the conduct. And as I go through this I just want  
17 to sort of preview a theme. There are multiple sort of  
18 junctures in the defendant's life when he could have made  
19 different choices. But one of the first most significant  
20 choices that he chose to make was to align himself with Abu  
21 Hanza, who your Honor knows intimately. This is a man whose  
22 agenda and whose message was as dangerous and as murderous as  
23 they come. Your Honor went through some of the speeches that  
24 Abu Hanza gave at his own sentencing. There was no secret, no  
25 ambiguity as to what that man stood for and this man chose to

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1 align himself with that message and he chose to do that for a  
2 long period of time. And the general agenda of Abu Hanza was  
3 simple, to encourage and insight global acts of terror and to  
4 send his followers to support those acts of terrorism.

5 And there was one man in particular a few men in  
6 particular who took it to the next step. This defendant, he  
7 was a loyal and a proud follower who was ready to put that  
8 general message into motion and he was handpicked by Abu Hanza  
9 with one other individual, Kasir. And they were supposed to go  
10 to Glide, Oregon and set up this camp and there was no secret  
11 as to what the camp was about. The purpose was to train young  
12 men to fight on the front lines in Afghanistan right alongside  
13 al-Qaeda.

14 So he made a choice when he aligned himself with Abu  
15 Hanza, when he stuck around and then when he decided to go to  
16 Oregon. And I don't think any sort mitigating circumstances  
17 about his conditions change that fact.

18 THE COURT: Hold on for one moment and just remind me  
19 if you could what the evidence at trial was and the record or  
20 anywhere else that you know that the Glide Oregon camp was  
21 specifically known to be for al-Qaeda. Now I know it was known  
22 to be for Abu Hanza. I know that Abu Hanza was himself -- I  
23 know how to get and link Abu Hanza to al-Qaeda and I know how  
24 that was done at trial, but was there anything for instance, I  
25 can't recall, from the letter the facts that were sent to Abu

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1 Hanza whether anything references al-Qaeda that's connected to  
2 Glide in writing?

3 MR. STANSBURY: Nothing in writing in facts and this  
4 defendant allocuted to the fact that he didn't know it was  
5 specifically al-Qaeda until after the fact. He knew he was  
6 going to support a jihadist camp. He didn't know that  
7 organization's name. He didn't know the name of that  
8 organization until later.

9 Now there is a host of other evidence from the trial  
10 and elsewhere that suggests that he should have known or would  
11 have known. Kasir was found with manuals and letters in his  
12 computer and he had letters addressed to Bin Laden as well as  
13 jihad. He had a copy of bingled's 1996 declaration of war.  
14 There was testimony in Ujaama and people present at the camp  
15 about the fact that this both this defendant and Kasir spoke  
16 about their prior training in Afghanistan.

17 Now I know the defense states in their submission that  
18 he didn't actually train prior to Glide and Afghanistan but he  
19 actually just boasted about it. Kasir went the extra step of  
20 saying that he actually was aligned with Bin Land and al-Qaeda  
21 at the time. So there is nothing in or out of this defendant's  
22 mouth at the time but all of the circumstances of Kasir's  
23 statements suggests that it was well-known that al-Qaeda's  
24 agenda was a being served by that camp.

25 THE COURT: All right. Thank you.

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1 MR. STANSBURY: And just to sort of expand on that  
2 point, I just want to touch on a point that's made in the reply  
3 brief. There's sort of this fine line that the defense seems  
4 to be trying to walk. He's allocuted to the offense. He's  
5 admitted that he was at the camp to serve a jihadist agenda.  
6 But then at the same time he's sort of back-peddling in his  
7 submission and saying, well, he was there really to support  
8 his, to serve his faith, to carry out what he viewed as an  
9 obligation to receive military training as part of his faith in  
10 Islam.

11 Now, I think that's a very hard distinction to make  
12 for the defendant. First of all start with his guilty plea and  
13 I think that's unambiguous and then we'll get into some of the  
14 facts. And I'm referring to page 24 and 25 of his guilty plea.  
15 He said, I traveled to Glide, Oregon to assist Kasir in  
16 creating a training camp and training others we wanted to  
17 participate in jihad on behalf of a terrorist organization. At  
18 the time I understood that Abu Hanza and on Kasir were  
19 associated with an Arab organization engaged in terrorist  
20 activity and was engaged in terrorism. I later came to know  
21 that this Arab organization was known as "al-Qaeda".

22 Now the Court pressed him on this point. And you  
23 asked:

24 I just want to make sure that it's correct that at the  
25 time you were engaged in this conduct you knew that you were

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1 assisting a terrorist conversation.

2 The defendant said: Yes, your Honor.

3 And you said again:

4 And did you understand that organization was involved  
5 in terrorist activity?

6 He said: I did, your Honor.

7 And you said again: And you know that at the time you  
8 were in engaged in these acts?

9 And he said: Yes, your Honor.

10 Now, there's no question that he knew sort of what  
11 this camp was about. Those are his words and the circumstance  
12 of the camp -- as I mentioned just to make it clear, and  
13 there's also no question about what Abu Hanza's agenda was. So  
14 as far as the defendant's obligations to his religion, there  
15 are many ways in which he could have fulfilled what he believed  
16 were his obligations. There are many people he could have  
17 aligned himself with. There are many places he could have  
18 gone. But the person he chose to associate himself with was  
19 Abu Hanza, the man who spewed a message of hate and violence  
20 towards innocent people, a man who spoke vocally and widely for  
21 many years seeking recruits just like this man to serve  
22 terrorist objectives. So that's who he chose to associate  
23 himself with. And it's clear that he took those messages to  
24 heart.

25 And then when you look at the conduct at Glide what



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1 does he do? Now, we're in the disputing that his role was  
2 different from some of the others. Kasir, as we mentioned in  
3 our submission, was more, carried more of an operational role.  
4 He was more involved in the actual military training. This  
5 defendant served a different kind of role. It was more of a  
6 spiritual role. He was an adviser who was served there to  
7 serve the purpose of inspiring these men to go fight on the  
8 front lines in Afghanistan right alongside al-Qaeda. And so  
9 that role is no less important and that doesn't make his  
10 conduct any less serious. So as your Honor well knows, the  
11 camp didn't work out.

12 And so what does he do at that point? Well, he  
13 doesn't leave. This is again a juncture on which he could have  
14 made a choice. He doesn't leave and go home. And it's quite  
15 clear again what the agenda is at this point. What does he do?  
16 He stays with Kasir and goes to Seattle. And at that point  
17 they join a mosque and it's there at the Dar Salam mosque in  
18 Seattle with he admits he is right alongside Kasir when Kasir  
19 is there teaching men how to make silencers, how to assemble  
20 and disassemble AK-47s, how to convert an AK-47 into a fully  
21 automatic firearm, how to modify an AK-47 so it can launch  
22 grenades. What ever issues were going on in this defendant's  
23 life at that time or later, there's no question what's going on  
24 around him and what he's chosen to participate in and to help  
25 effect.

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1 Now, what happens after Glide? So we know based on  
2 the investigations that followed 9/11 and after Aswat's arrest  
3 that he remained committed to violent jihad in the years after  
4 he left the United States. Again, we submit, this is another  
5 critical juncture, another point of reference for your Honor to  
6 consider whether or not 20 years is appropriate.

7 As you mentioned he is no longer associated with Abu  
8 Hanza at some point. But what does he do? He doesn't go into  
9 meditation mode. He doesn't find a new sort of more main  
10 stream scholar to follow. No. He goes right to the front  
11 rounds in Afghanistan. He goes to al-Qaeda's primary training  
12 camp, Al Farouq. This was not just any ordinary camp and there  
13 was testimony at the trial. This was al-Qaeda's primary  
14 training ground where the troupes were trained in military  
15 tactics, weapons, explosives and all of the things that they  
16 needed to do to carry out al-Qaeda's agenda.

17 We know in this part because a few year after 9/11 the  
18 defendant's name was found on the ledger that your Honor is  
19 also aware of. This is the ledger that was recovered from an  
20 al-Qaeda safe house in Pakistan where -- Sheikh Muhammad who  
21 was at the time al-Qaeda's chief operational planner had been  
22 present. And as the Court will recall there were a number  
23 items recovered from that house that contained KSM's  
24 fingerprints.

25 Now, this defendant denies being present at that

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1 particular house in Karachi and he denies actually meeting KSM.  
2 But this is a powerful fact and I think it goes to the  
3 defendant commitment and his mindset and what kind of harm he  
4 is capable of and agenda that he was committed to and that's a  
5 frightening agenda.

6 We know that the defendant never denied that he  
7 received training at Al Farouq even if he denied directly  
8 meeting KFM. He admits in mid 2001 he traveled to Pakistan.  
9 And I'm referring now to Paragraph 36 Note Two of the PSR he  
10 stated himself that he traveled to Pakistan to attend the  
11 training camp in Afghanistan. He mentions going to the Taliban  
12 office to be interviewed, going to Afghanistan, being vetted at  
13 this guest house in Kandahar where he was told to surrender his  
14 passport and then he went on to Al Farouq.

15 So that's sort of another decision point as I  
16 mentioned. And I think that goes a long way to showing what  
17 kind of individual he is. At each point in his life when he  
18 had a decision to make he made the decision to continue to  
19 carry out the agenda of violent jihad.

20 Now when he was arrested in 2005 in Zambia -- and this  
21 was six years after he traveled to Glide. Four years after he  
22 had attended al-Qaeda's camps and he was arrested -- and I mean  
23 if the defendant's conduct up to that point was not disturbing  
24 enough and this decision was not clear enough, he had within  
25 his computer which as we submit in our brief, had a host of

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1 disturbing literature that suggested that he had not given up  
2 his commitment to the agenda I mentioned.

3 THE COURT: Let me just ask you, does anybody have any  
4 information as to the modeled of that computer and whether  
5 since such a lengthy period of time had passed whether that  
6 computer was a laptop, I assume, had been acquired subsequent  
7 to or contemporaneous with the Al Farouq training and or Glide  
8 or is it something --

9 MR. STANSBURY: I don't believe we have that  
10 information, your Honor.

11 THE COURT: All right. Only because four years is a  
12 long time for a computer to continue to be sort of in existence  
13 but I don't want to go there if people don't know.

14 MR. STANSBURY: Yes. And I know the defense sort of  
15 tries, they make a point in the reply brief. They talk about  
16 some of the thing things that we mentioned in the computer, the  
17 book on survival skills, the -- cookbook, etc., and they try to  
18 downplay the significance of these. And I will submit that the  
19 significance of these is not in each individual manual or  
20 instruction booklet. It's the combination of these things and  
21 it's the presence of these things in 2005 after the defendant  
22 has shown himself to be committed to a particular agenda. This  
23 is I believe Mr. Quijano joked in his brief that had he fell  
24 threw the -- cookbook in the 70s.

25 THE COURT: I don't think it was a joke.

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1 MR. STANSBURY: But this is not Mr. Quijano we're  
2 talking about. This is someone who tried to setup a terrorist  
3 training camp on U.S. soil. This is a person who was on the  
4 front lines in Afghanistan and trained with al-Qaeda. So the  
5 presence of these things on my computer or your computer I  
6 would hope they would never be found but they carry a different  
7 context for this defendant. And what we mentioned in our brief  
8 there's only a subset of what we found and I'll just go through  
9 a few of them.

10 A nuclear biological chemical survival E-book, the  
11 Anarchist Cookbook, the Antiterrorism Survival Bible E-book,  
12 the Art of War, the Big Book of Mischief, the CIA Book of Dirty  
13 Tricks, CIA Remote Viewing Mail, DMV Military Pentagon Secrets,  
14 Hand Combat E-books, Marine Corp: Advanced Military Skills, a  
15 publication called Marine Sniper, the Textbook of Close Combat,  
16 what appear to be chapters from a U.S. Army booklet, one  
17 Chapter Three Top Secret Defense Biological Weapons Technology,  
18 Chapter Six Nuclear Weapons Effects Technology, U.S. Navy Seal  
19 Physical Fitness Guide, then there are photos of diagrams of  
20 certain words and other -- components that we mentioned in our  
21 brief.

22 THE COURT: In terms of the way that those documents  
23 were maintained on the computer, were they maintained in  
24 separate files or downloaded in a single file?

25 MR. STANSBURY: Yes. Let me just confer --

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1 THE COURT: And is there any dispute as to whatever  
2 the answer --

3 MR. STANSBURY: I don't think there's any dispute.

4 (Pause)

5 MR. STANSBURY: I don't think there's any dispute as  
6 to how they were organized. They were all separate files.  
7 There wasn't sort of in an overarching folder.

8 THE COURT: All right. So, it wasn't -- at this point  
9 if time you don't have any information as it being downloaded  
10 only as a single file?

11 MR. STANSBURY: That's correct.

12 THE COURT: All right.

13 MR. STANSBURY: So you put all of this in context and  
14 you take a step back, your Honor. I think going back to your  
15 key question today I think we do have a clear picture of who  
16 this defendant is. Certainly in the context of the conduct for  
17 I which he is going to be punished today. He is a defendant  
18 who at the least three different junctions mentioned today over  
19 approximately a six-year period made his agenda clear. He is  
20 man who was at the right hand of Abu Hanza. One of only a few  
21 who took the extra step of traveling halfway across the world  
22 to carry out that agenda. So I think we have that very clear  
23 picture of who that defendant is.

24 THE COURT: Have you addressed the government's view  
25 on the mental health issue? And I'll put it in a very specific

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1 way that the Court -- and the Court does take into  
2 consideration very carefully the need for monitored consistent  
3 mental health treatment. And a concern, I'll tell you the  
4 Court's concern is I don't want the defendant to enter a  
5 situation that the BOP may put him in because he's doing well  
6 now which causes a deterioration, potentially, a dramatic  
7 deterioration in his mental health condition which could result  
8 in him coming out more dangerous than he's going in to whatever  
9 facility he's housed at because we only have him at maximum,  
10 right, for another six years. That's what we're talking about,  
11 somewhere in that. The BOP will calculate it but he serves all  
12 but the maximum of six years of his possible sentence. So, if  
13 he were to go to the BOP and his mental condition were to  
14 deteriorate dramatically you could end up having created more  
15 of a problem than we have now. I don't know. That's something  
16 I have been thinking about.

17 MR. STANSBURY: And I completely understand that  
18 concern. And you're going to hear no dispute from us that this  
19 is a defendant who needs mental health treatment. And I hope  
20 that the submission that we made to your Honor with the  
21 assurance from the BOP assuaged some of those concerns. I  
22 think the BOP has shown itself very capable of handling a host  
23 of very complicated mental health issues.

24 We, as you know went back and forth in the process of  
25 extradition to assure the British authorities that the BOP was

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1 capable of that. I think they've shown themselves capable of  
2 that. We've heard no issues with the defendant in terms of the  
3 care he's receiving or the treatment he's receiving. And this  
4 is just here locally. So he's obviously going to get better  
5 treatment if he's put in an institution that has more  
6 specialized services.

7 We have had conversations with the BOP as well in  
8 advance of sentencing. I recall from the Abu Hanza sentencing  
9 your Honor spent quite a bit of time on medical issues at that  
10 sentencing. And you had a conversation with Dominique Ray in  
11 the general counsel's office. We spoke to Ms. Ray as well as  
12 about this defendant and we're quite confident that the BOP is  
13 able to handle it. She also noted as we noted in our brief  
14 that if anything the services have gotten better and their  
15 benchmarks for determining where people should be housed have  
16 gotten better. So if someone is diagnosed with a -- I believe  
17 the, I forget the language but it's a severe mental illness and  
18 has to be evaluated by a team of doctors at the BOP, they won't  
19 be housed at certain facilities or under certain conditions.  
20 So I think all of that should give us comfort that he's not  
21 going to be put in that position.

22 Does that answer your question?

23 THE COURT: It does. I'll tell you what causes me  
24 concern is that short of an order from the Court as to housing  
25 in a particular place which I frankly I've never done. I've



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1 let BOP -- it's very important to let the BOP assess things  
2 based upon their protocols. My concern is that I think if this  
3 defendant went into solitary I think it would be potentially  
4 quite damaging. I hear your argument and I'll let you  
5 continue. It's just that I think that we need to put the  
6 person that you're describing in the context of someone who  
7 also has these mental conditions -- understand we only have him  
8 for another six years -- and try to figure out how to protect  
9 society best from any further behavior. And we know that the  
10 number one factor that we've got to worry about is mental  
11 health stability, right?

12 MR. STANSBURY: Right.

13 THE COURT: Because that determines I think in large  
14 part some of the outcomes for the future potentially.

15 MR. STANSBURY: And as I mentioned, I -- particularly  
16 since 2012 since that letter that is attached to our brief was  
17 submitted, as I mentioned there is a new BOP policy that  
18 addresses this specific issue that it would be a very unusual  
19 circumstance for this defendant if he's considered to have a  
20 severe mental illness to be placed in solitary. And the BOP is  
21 going to make that determination. I certainly am not in a  
22 position to make it. And I don't know that anybody in this  
23 court is in a position to make it. But I will say that the  
24 procedures are in place to avoid precisely the situation your  
25 Honor is describing.

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1           THE COURT: My concern is the BOP's concerned with  
2           their situation at the time. My concern is about when he gets  
3           out. My concern is that we don't have a situation where the  
4           defendant gets out, is mentally unstable, has deteriorated  
5           significantly, is released because we no longer have any  
6           ability to hold on to him. He is sent off to England, ends up  
7           in London and we're in a worse place then we are now. My worry  
8           about the BOP is that their interests are different from my  
9           responsibility.

10          MR. STANSBURY: Understood, your Honor, but  
11          respectfully I believe that it can only get better because I  
12          think the services that are going to be available to him are  
13          only going to get better. He is not going to be at the MCC and  
14          so the BOP is going to poor all of its resource as it has in  
15          any number of cases where people are diagnosed with  
16          schizophrenia and other illnesses to insure that that doesn't  
17          happen. I think we all have particularly have great comfort in  
18          that.

19          If I can just touch on two more points which is the  
20          need for deterrence in this case and the need to protect the  
21          public. And as your Honor mentions, the thought of this  
22          defendant getting out in a worse place than he is now is a  
23          frightening thought. But I also think that also goes to the  
24          need for a substantial sentence. This is a young man who is 41  
25          years old. He's still a man who can engage in dangerous acts

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1 even when he gets out. He's shown him self to be amenable and  
2 to be persuadable. And he's shown him somebody to align  
3 himself with very persuasive people, particularly, in today's  
4 context where a lot of young men are making that jump and are  
5 going to Syria and elsewhere. That's certainly not a situation  
6 that we want to be in. And we believe that not only is it a  
7 heavy sentence necessary both to as a matter of punishment and  
8 to protect the public but also to prevent this defendant from  
9 getting any worse, from getting himself into a position where  
10 he could be persuaded to do the kinds of violent things that's  
11 he been encouraged do in the past.

12 And the final point is deterrence, both the need for  
13 specific deterrence for the reasons I mentioned, he's shown  
14 himself as I mentioned on repeated occasions to align himself  
15 with dangerous agendas. He's a very persuadable young man and  
16 I think that that goes to the deterrence issue as well.  
17 There's also a need for general deterrence. Twenty years is  
18 not, I'll respectfully submit, a long time for a sentence of  
19 this magnitude, particularly, when you're starting with as I  
20 mentioned a benchmark of 360 to life.

21 His role as I mentioned was not as serious as some of  
22 the other defendants in this case but it was significant. So  
23 the nature and circumstance of the offense, the need for  
24 deterrence, the need to protect the public and the other  
25 3553(A) factors we submit all warrant a guidelines sentence of

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1 20 years.

2 The defendant traveled to this country which is hard  
3 to imagine in today's, in this day and age. But he traveled to  
4 this country at the direction of one of the world's most  
5 dangerous terrorist leaders for the purpose of training men who  
6 were going to support a war in jihad. He continued to support  
7 that agenda years by going to Afghanistan and joining the fight  
8 there.

9 So we submit that for all of those reasons, 20 years  
10 is perfectly appropriate. It would be in line with and I think  
11 fair in right of other sentences that have been handed down in  
12 this and other cases and we submit it is necessary to take into  
13 account the seriousness of this conduct. Thank you.

14 THE COURT: Thank you.

15 Mr. Quijano.

16 MR. QUIJANO: Thank you, your Honor.

17 Your Honor, I too wish to thank the Court for its  
18 guidance this morning in terms of various questions it clearly  
19 has. With regard to the tension that the Court referenced this  
20 morning, the tension between the guideline sentence as it is  
21 now of 20 years and other statutory considerations in  
22 sentencing that have come from the statutory maximum for these  
23 crimes, I would suggest to the Court that this tension is  
24 created initially, greatly by the mandatory terrorism  
25 enhancement guideline. We've described it as discriminatory.

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1 It applies in any case that charges a terrorism type of crime.  
2 There's no question -- the Court cannot reject it. It has to  
3 be there regardless of the facts and circumstance of the  
4 individual case. I suggest, your Honor, that what that does is  
5 and it really is the result or creates the tension that the  
6 Court has referred to. What that does, it in essence is in  
7 complete tension with the entire concept of sentencing after  
8 Booker in 3553.

9 Where we are now with sentencing with 3553, certainly  
10 one of the ideas, one of the goals is individualized sentencing  
11 based on the circumstances of the offense, who this individual  
12 is. The actual conduct and all these things fly completely  
13 into the face of a terrorism enhancement which automatically  
14 creates a criminal history category six, which as I've  
15 suggested it almost inherently will result in an overstatement  
16 of one's true criminal history. It certainly does in this  
17 situation in this case with this young man and obviously jumps  
18 a guideline from something that would perhaps reflect more of  
19 the actual conduct involved in the case that the Court is  
20 considering for sentencing to something that is three, four  
21 times that.

22 In terms of the Court's questions regarding his mental  
23 health and the Bureau of Prisons, I certainly understand the  
24 concern. I also share a deep concern of what would happen if  
25 Haroon was not afforded his medication or put in a situation

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1 such as a Special Housing Unit and what solitary confinement  
2 really is in the Bureau of Prisons. I submit to the Court that  
3 Haroon today has a very good understanding and appreciation for  
4 what his mental issues are. And the road he's traveled and how  
5 that's affected him throughout so much of his life well before  
6 he was diagnosed and, certainly, during the time period in  
7 question. He has extensive recognition of that and appreciates  
8 the effect it could have on him and talks candidly of the  
9 difference and how he is now and how he views so many things.

10 I would note the following however, in terms of this  
11 issue with the BOP and frankly, I'm not sure how this would cut  
12 in terms of sentencing but as your Honor knows great assurances  
13 were made to the United Kingdom during the extradition process.  
14 It took years. The entire reason for him not being extradited  
15 was because of a concern that the United Kingdom had of how he  
16 would be housed and the kind of medical treatment he would get  
17 if he was allowed to be extradited today to the United States.  
18 Specifically, they constantly refer to how the BOP would treat  
19 him. Would he be in solitary confinement? Would he receive  
20 the same kind of medication that he clearly needed and  
21 benefited so much over the ten years that he was being detained  
22 in the United Kingdom?

23 The government assured the United Kingdom repeatedly  
24 that BOP would comply. They outlined in fact and entire  
25 scenario what would happen the moment he came here. He would

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1 not go into a BOP facility. He would be sent to a medical  
2 facility where he would receive comparable counseling  
3 medication and treatment as he had been receiving in the United  
4 Kingdom. And they would make an assessment, not the BOP, an  
5 independent doctor fully briefed on exactly his condition, his  
6 medication, his entire psychological and emotional history and  
7 what was needed. This facility, this doctor would make an  
8 evaluation and until they were satisfied that he could return  
9 to a BOP facility and receive exactly what he needed to receive  
10 to the point that it would not affect his condition, they would  
11 never allow him to return.

12 I could tell the Court that his attorneys in the  
13 United Kingdom when they were reviewing him and I have been  
14 told that they certainly believe that the Court in the United  
15 Kingdom when they reviewed these assurances all assumed he  
16 would be in this evaluation position, if you will, for  
17 certainly a necessary period of time to conduct an actual  
18 evaluation. Two weeks later he returned to the BOP. The  
19 assurances as far as the independent doctor had been made.  
20 Regrettably, he was initially put in the SHU and there were two  
21 other instances since then where for no disciplinary reason,  
22 whatsoever, his record at the BOP, at the MCC, at the MDC is  
23 exemplary -- and I'll get to that in a moment -- but because of  
24 various either housing situations there were at least two  
25 occasions, I think five days once at MDC recently where he was

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1 placed in segregation in the SHU received medication and  
2 certainly we noticed the difference immediately. It is of  
3 concern.

4 THE COURT: Let me just probe on that for a moment.  
5 This is the first I've heard about him being at the MDC without  
6 medication.

7 MR. QUIJANO: It was for a limited period of time.

8 THE COURT: Was it for a five-day period?

9 MR. QUIJANO: One moment.

10 (Pause)

11 MR. QUIJANO: I believe it was a five-day period, your  
12 Honor.

13 THE COURT: What was the reason given for that  
14 isolation?

15 MR. QUIJANO: I don't know if -- I don't know for sure  
16 where we ended up. The government certainly assisted us in  
17 trying to get an answer from the BOP. We obviously talked to  
18 them. We do know it was not disciplinary. Apparently, I don't  
19 know. I'm assuming it was a housing situation internally in  
20 finding a place for him but the point is it did happen. And  
21 again, I'm not sure exactly how this cuts in terms of  
22 determining the sentence. But given the Court's questions in  
23 this area, I thought it was important to note.

24 He -- let me continue. The government obviously is  
25 submitting to this Court that a guideline sentence of 20 years



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1 is appropriate. It's appropriate pursuant to 3553 and all of  
2 those factors. They've outline for the past half hour or so  
3 the conduct, his actions. As we noted in our submissions, your  
4 Honor, we believe that for the Court to exercise its review of  
5 these 3553(A) factors it is necessary to view this conduct in  
6 terms of the context of the time and his motivation. By the  
7 context of the time, obviously, I'm referring to a pre-9/11  
8 world. It's kind of hard I think for any of us to really  
9 remember what that was like but that it is extremely relevant  
10 here.

11 In terms of his actual conduct at Glide, I would  
12 submit that there's been some mischaracterizations of the  
13 conduct, what leads up to it, these associations and what his  
14 motivation was. At no time, your Honor, did he align himself  
15 with the radical violent views of Abu Hanza. When he traveled  
16 to London in his early 20s he was somewhat -- clearly no  
17 direction, no job, no involvement with anyone. He started to  
18 go to the Finsbury mosque. He wanted, he'd been raised in a  
19 religious family, devout, certainly, not radical, not political  
20 at all and he felt a home there. He actually felt wanted  
21 there. He described to me how he felt sorry for Abu Hanza  
22 because of the handicaps and he really started to become almost  
23 an assistant for him. In terms of day-to-day chores just  
24 living, accomplishing tasks, things like that.

25 At the time -- again, this would have been 1999, well

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1 before 911.

2 THE COURT: But it is after Bin Laden had declared war  
3 on United States.

4 MR. QUIJANO: It is. But, your Honor, at that time  
5 most Americans were still not fully ware of Bin Laden or what  
6 al-Qaeda was. At that time I believe al-Qaeda had struck only  
7 once outside of the Middle East and that was the embassy  
8 bombings. At the time which is after the Bosnia genocide of  
9 Muslims were severely affected so much of the Muslim world  
10 especially young Muslim men, there is a tenant in Islam, there  
11 is a tenant in the Quran which requires that young men, that  
12 men obtain the ability to defend other Muslims. It's called  
13 training. That is a tenant. That is not being committed to  
14 jihad As jihad is used today. That is not being committed to  
15 terrorism as terrorism is used today. It is part of the Quran.  
16 It is part of what they believe.

17 And Haroon as a teenager like so many young Muslim men  
18 in the mid 90s would see these videos, these news clips of what  
19 turned out to be thousands of Muslims being murdered in Bosnia.  
20 And he, like so many at the time and it still continues granted  
21 it has taken on a completely different context, if you will,  
22 but at the time it was very common for young Muslim men  
23 throughout the world to try and seek training, military  
24 training to be in a position to prevent a Bosnia happening to  
25 them.

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Sentence

1           So Hamza, of course the Court is familiar with the  
2           circumstance of Glide, James Ujamma sends this invitation  
3           describing what he has there in these American converts to  
4           Islam who want to join the jihad and go to Afghanistan and  
5           fight and we need you, Abu Hanza, to send us the proper  
6           training and inspiration and we invite you to come overall, of  
7           this. And Hamza sends Kasir and he sens Haroon.

8           This Court heard testimony from the government's own  
9           cooperating witnesses including Ujaama and other people who  
10          were not cooperating witnesses, who were subpoenaed witnesses,  
11          some with immunity, whatever. They described to you what that  
12          camp was which frankly was somewhat pathetic and laughable.  
13          Obviously, Ujamma had lied about a lot of what was there. But  
14          for our purposes they described what Haroon did, indeed, what  
15          his role was. There was no dispute about that. Kasir, yes,  
16          Kasir is the military one. He is going to teach them how to  
17          behead people, how to shoot AK 447s, how to fight and how to  
18          presumably, yes, engage in the type of jihad as we understand  
19          it now.

20          Haroon's role as told to you under oath by government  
21          witnesses was to teach Islam, to teach the Quran, to teach  
22          Arabic. He's a Hafiz, as his brother and as his father before  
23          him. That is someone who has memorized the Quran. In their  
24          culture that is an essence of pride and that's what he was  
25          supposed to do there. And that's what witnesses, government

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1 witness haves told you he did. He is there for, approximately,  
2 I think all together six weeks part of it in Glide and part of  
3 it in Seattle.

4 They described to you during that trial how he usually  
5 was just there walking with Kasir. Kasir is the one who brings  
6 him there. He leaves I believe shortly after Kasir leaves.  
7 All together it's approximately six weeks but what did he do  
8 there? Trust, I don't need to go through the actual testimony  
9 that came out at the trial but it was minimal. And I don't  
10 raise the term minimal in terms of guideline reduction. I  
11 raise it in just the little word. With this conspiracy or the  
12 substantive count is evaluated terms of his actual conduct, I  
13 submit to you, your Honor, at least in terms of Glide, there is  
14 no other description in terms of mental at least as it applies  
15 to his other co-conspirators, if you will.

16 When viewed in terms of what the world was at that  
17 time that is pre-9/11 and what his motivation was, yes, he pled  
18 guilty to this crime. He understood we explained what these  
19 elements were, what the proof would be, how there was no  
20 necessity for him to know that it was al-Qaeda or that it was  
21 on a designated list as a terrorist organization. If he  
22 understood as he explained to us that Abu Hanza and Kasir --  
23 I'll use the term "associated" or at least were part or had  
24 some connection -- to what he just considered some kind of an  
25 Arab group that apparently had done things that would probably

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1 be sufficient to convict him. And the reality is, yes, it was  
2 also explained to him of what would happen if just all of that  
3 was proved at a trial which he understood based on what had  
4 happened probably would be proved at a trial if nothing else  
5 maybe because of the association with Hamza and Kasir and some  
6 of the circumstantial aspects that the government has outlined  
7 for you and he would now be facing not a 20 year maximum, your  
8 Honor. He'd be facing, essentially, the potential of, if not  
9 the equivalent of a life sentence, certainly that.

10 So please in any of the comments I've made today let  
11 me stress one thing. At no time are we suggesting or is he  
12 suggesting he is not guilty of what he has been convicted of by  
13 his on plea. He fully accepts responsibilities for that. He  
14 fully accepts and has stated and will state through me in a few  
15 moments even more his conduct and what it was. And he  
16 understands under our system, under these elements he is guilty  
17 of these charges. But that conduct does not warrant a 20-year  
18 sentence. It's not a slap on the wrist for what he did which I  
19 would describe as total minimal. And in a few moments I'm  
20 going to get the post Glide which I would take the position  
21 actually is some of the strongest support as to why he does not  
22 have a long-term connection to jihadist violence as the  
23 government would have you believe. If anything, it cuts  
24 completely against in the opposite of that.

25 But he has spent now a quarter of his life in prison

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1 or in confinement. Obviously, we believe that's more than  
2 sufficient to do more of a sentence based on what he did. And  
3 as I said -- I'll get to post Glide in a moment -- is simply  
4 not just not warranted. It would be wrong, your Honor.

5 THE COURT: I know you are going to get to would he  
6 did and I think it's important because the sentencing  
7 guidelines and the sentencing statute require a Court not only  
8 to look at the crime of conviction but also to evaluate social  
9 responsibility going forward and likelihood of recidivism etc.,  
10 and there are many theories of sentencing only one which is  
11 just desserts.

12 MR. QUIJANO: Of course. We, obviously, were aware of  
13 that from the moment we pled guilty. We have addressed that as  
14 early as the objections to the presentence report in all our  
15 submissions and now I gladly address it also because I still  
16 believe what we have at the end of that after a fair and  
17 accurate examination of what takes place after Glide, if  
18 anything, underscores the fact that a sentence of 20 years  
19 would be beyond excessive.

20 What happens after Glide? This is no lieutenant  
21 devotee of Abu Hanza, let alone Kasir. He returns to London  
22 and frankly, is disgusted. Shortly after he returns Ujaama,  
23 the government's witness, the government mastermind at Glide  
24 who still hasn't been sentenced and presumably will end up with  
25 something -- well. Ujamma comes to London to meet with Abu

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1 Hanza and Kasir and the talk is of total violence. He left  
2 that day. He has never been back. He has not seen Abu Hanza  
3 other than at the MCC, apparently, and Kasir of course. He  
4 completely disassociated from them because what he now saw and  
5 he tells me, I realize at the very least I guess I was naive  
6 then to think the people, especially Abu Hanza, the people at  
7 that mosque, they seem like such a finding a home for me, that  
8 those people would have the same morals and views. And, your  
9 Honor, the view of Islam that he has is the opposite of a  
10 jihadist. The view of Islam that he has is portrayed by -- is  
11 the letter from the sister in the spider story. He really  
12 believes that all of God's creatures, all of people God's  
13 people regardless of nationality, religion or anything have to  
14 be treated kindly and well. He is abhorred at the idea of  
15 violence on innocence. But he also believes that he had an  
16 obligation to train. As I referred to you before because of  
17 the Quran, because of what happened in Bosnia, because of all  
18 of that, because of the discrimination he could still see in  
19 his native England --

20 THE COURT: Now I thought he went to Abu Hanza  
21 starting in 19 --

22 MR. QUIJANO: 99, I believe.

23 THE COURT: No. He was with Abu Hanza prior to that.

24 MR. QUIJANO: OK. I am told absolutely right. But  
25 what he basically did, he'd drive him around, take him shopping

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1 and get literally stuff off the shelves for him. He cooked for  
2 him. He took care of his living quarters. That was his role.

3 THE COURT: But he also sat with him at the table in  
4 conferences. I saw the videos. I'm sure you have too, where  
5 Abu Hanza as spewing hatred and venom and he was sitting right  
6 next to him on dias.

7 MR. QUIJANO: Yes.

8 THE COURT: So he wasn't just getting a cup of tea.

9 MR. QUIJANO: Your Honor, no, and that's exactly why  
10 he was able to plead guilty. He was aware of Hanza's  
11 connection at that point. He did not fully accept it or  
12 realize it until he came back from Glide and the Glide  
13 experience and the final blow was then having Ujamma speaking  
14 to them, to Hamza in the way he was.

15 I've had the honor and pleasure of now knowing him for  
16 a year. I've spent a lot of time with him as has my partner,  
17 Ms. Sideris. He has almost child-like sense of wonder and  
18 curiosity about life. He wants often to see for himself. He  
19 leaves Finsbury Mosque and first goes to Saudi Arabia. He  
20 wanted to see what life in an Islamic land was like. And there  
21 there is more talk about these training camps. So, yes, he  
22 travels to where the training camps were. It is now 2000. If  
23 I have my timing correctly it's approximately five or six  
24 months after he's left Glide, the stop at Saudi Arabia and then  
25 he goes -- and again, your Honor, at the time many young Muslim



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1 men were going. They were not going to join al-Qaeda. He  
2 didn't even know the name. Many didn't. Most didn't. But  
3 many were not going to join any particular type of  
4 organization. They wanted this training. They wanted this  
5 kind of organized training because of there tenant and because  
6 of this concern of protecting Muslim people. Again, I keep  
7 going back to Bosnia because he goes back to them so often and  
8 he describes the horror of watching these things.

9 So he goes through what apparently is the protocol  
10 that takes place there, to get to these camps, at least  
11 especially before 9/11. And again, not to start lecturing the  
12 Court on history. At the time the Taliban -- unless I'm  
13 mistake -- is not even one of these designated terrorist  
14 organizations. The Taliban -- and I don't think most people  
15 even knew the name at that time -- are involved in the civil  
16 war with northern alliance. It's all the remnants of when  
17 Mujahideen had pushed the Soviets out of Afghanistan, the  
18 Mujahideen who of course this country backed.

19 Haroon and many young men went there really viewed  
20 those people would be the trainers. These people from  
21 Afghanistan, these Mujahideen or Arabs or whatever they were  
22 that were the trainers, he was not going there to link up with,  
23 as the government has suggested to this Court, to link up with  
24 al-Qaeda, didn't know they existed. There was a protocol. You  
25 had to be vetted and this took place at a guest house, not in

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1 Pakistan, not in Karachi. The one he went to was in Kandahar.

2 And there apparently is part after the protocol of  
3 these young men had to surrender their goods as well as their  
4 passport. I don't believe anyone can tell this Court exactly  
5 what Government Exhibit 1111 is. We certainly, I would submit,  
6 can infer that it appears to be a ledger that appears to be  
7 memorializing things like passports that are surrendered from a  
8 lot of individuals. His name appears on that or at least a  
9 variation of his name, I'm not going to quibble about that. I  
10 think it's Haroon Aswat or something like that. And two United  
11 Kingdom passports even though he insists he only had one.  
12 Regardless, the passport is surrendered. He then goes to a  
13 camp which he just knew as a camp. It apparently now is the  
14 notorious Al Farouq camp where thousands upon thousands of  
15 people get trained or were trained. But, again, it's before  
16 9/11. He's still not aware of al-Qaeda or anything like that.  
17 He is in Afghanistan though undergoing this training when 9/11  
18 finally happens. And about a month later, of course, the  
19 bombing starts and he runs out of Afghanistan back into  
20 Pakistan. He then did you not linger -- if I recall the  
21 language used by the government -- in Pakistan. He spent the  
22 next several months trying to find the passport to get the  
23 passport back. One can only imagine the chaos that was  
24 happening during that period of time, what was happening in  
25 Afghanistan and the war. It took him a period of time. He

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1 doesn't join up with al-Qaeda. He didn't go to Bora Bora and  
2 start fighting. He is looking for a passport. He finally gets  
3 it and he leaves when he finally could leave and enter into  
4 another country. At his family's suggestion he goes to South  
5 Africa where he had family there.

6 And then four years go by, your Honor, four years.  
7 And I would suggest respectfully to the Court that those four  
8 years should answer concerns the Court may have about, as the  
9 Court posed earlier, Who is this young man?

10 Is he someone who only because of a matter of timing  
11 didn't engage in my real violent terrorist acts? Or is this a  
12 young man who was misled and got himself led astray? I would  
13 suggest to you he is not even the latter. He wasn't so much  
14 misled because he never tried to be a part of al-Qaeda. He  
15 wasn't misled because he never had any intention of committing  
16 any terrorist act, any violence against anyone, let alone in  
17 the name of Islam. But it should. These four years, your  
18 Honor, should answer the question of, Who is this young man,  
19 because nothing happened. He quickly adapted himself to an  
20 almost hippie-like lifestyle, if you will, where he discovered  
21 if he made copies of CDs, originally, it was Islamic prayers  
22 and music, some videos, he was able to eke out a living first  
23 by just setting up a little stall, if you will, outside of a  
24 mosque, then a marketplace and then as he started to make a  
25 little bit more money, he essentially became an itinerant of a

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1 salesman going not just to South Africa but to Zambia, I  
2 believe in another neighboring country to mosques and outdoor  
3 food markets where he would sell inventory group. He  
4 eventually was able to buy a little car.

5 So he now is trying to download as much as he can to  
6 create these CDs. When the government during plea negotiations  
7 referred to I believe what they referred to at the time as  
8 problematic files or material on his computer, obviously, we  
9 addressed it immediately. It took us a while to get some of  
10 these files. It's just difficult to open them. And certainly,  
11 of the ones that were outlined this morning by the government  
12 and the ones referred to in its submissions I believe if I  
13 recall correctly, the only one he vaguely recalls was the --  
14 one or to the others. He has described doing that.

15 And again, I stress to, your Honor, a few things.  
16 One, there were apparently thousands of files on this computer  
17 and external hard drive. They ran the gamut from TV shows  
18 Islamic, a lot of Islamic, the original ones, the music, the  
19 prayers the chants, videos to apparently these kinds of  
20 documents which in our review of the problematic material are  
21 all readily available on the internet. What isn't?

22 Most of them, your Honor, yes, I did I suppose make  
23 fun but most of them are absolutely pathetic but he does not  
24 remember seeing any, except one of those. He would in an  
25 effort to increase his inventory used two people who were

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1     apparently much more computer savvy where he would routinely  
2     just give them the hard drive and they would download all sorts  
3     of material and then he would see what he could use and make  
4     his CDs. But it's so much more than that because it's four  
5     years. Nothing happens.

6             If I recall correctly I believe in one of the  
7     government's submissions in an effort to find support for the  
8     20 year sentence it asked this Court to impose it refers to  
9     when he is arrested he has wires. He was an electrical  
10    engineering student and a couple years he went to college. His  
11    family has described to us as he has that since he was a child  
12    we take everything apart and put things together. Having wires  
13    did not justify a 20-year sentence. He did not join anything.  
14    He certainly did not do anything. He was perfectly content for  
15    probably the first time in his life that admittedly before  
16    there was psychotropic medication he was taking, yes, we like  
17    self-medicate with marijuana but he was at peace and happy with  
18    his religion, happy with his life and then he was arrested and  
19    now he's here.

20            The court referenced some of letters that he's  
21    received. Let me just spend a few moments on what Ms -- was  
22    able to provide the Court. I think it is extremely important  
23    and I believe enlightening for this Court.

24            THE COURT: I'm going to ask you just to hold on for a  
25    moment. I think what we're going to do right now is since it

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1 sounds like you going to move to a new topic, just take a short  
2 break and we have been going for about an hour now and we'll  
3 come back and then we'll continue with that point.

4 I also it would be helpful since we paused for moment  
5 to know whether the government if going to want to respond at  
6 all or whether or not we'll just head on and do the next part  
7 right after this. Normally there is no response.

8 MR. STANSBURY: So far, no. If we do I'll be very  
9 brief.

10 THE COURT: That's fine. Thank you. If I have  
11 questions or I have anything I think you need to respond to  
12 I'll let you know.

13 Let's just take a short break. Thank you.

14 (Recess)

15 THE COURT: Be seated.

16 All right. Mr. Quijano, you may proceed, sir.

17 MR. QUIJANO: Thank you, your Honor. I'm sorry for  
18 being a little long but I went completely off script after the  
19 Court posed all these questions.

20 THE COURT: No, don't worry about taking up time. You  
21 certainly should say whatever you would like to say.

22 MR. QUIJANO: Thank you, your Honor.

23 Your Honor, I'd like to address Ms. Pierce's comments  
24 and observations of Haroon Aswat. As your Honor knows, in her  
25 letter she describes what she was able to observe when Haroon

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1 was first incarcerated and in particular, his interactions with  
2 the people who he was incarcerated with. As the Court may  
3 recall Ms. Pierce has a career that stretches now almost 40  
4 years and, apparently, she's represented numerous individuals  
5 charged with terrorist acts and crimes. And at the time  
6 apparently Haroon was being housed in an area at a particular  
7 prison which was populated, if you will, primarily with people  
8 charged with similar types of crimes and types of backgrounds  
9 certainly the government has tried to attribute to Haroon. And  
10 yet when she observed -- I certainly for one found not just  
11 interesting but I think relevant -- she saw that they, these  
12 other men accused of terrorism found Haroon to be puzzled and  
13 he was equally puzzled by them. It was clear that they did not  
14 share the same common ground in terms of politics mindsets and  
15 placements on any religious political spectrum. Indeed, a  
16 small close unit where they were where close contact should  
17 have led to easy bonding, she found the reverse to happen.  
18 That it appeared to be the case that Mr. Aswat simply didn't,  
19 to use her term, March to the same tune. Instead, he followed  
20 his own course. She in fact believes it may have exacerbated  
21 his eventual mental breakdown.

22 As to what we can expect in the future however, your  
23 Honor, quite simply, this is not a man of violence. He has  
24 never wished to harm anyone. He still doesn't. Indeed, he  
25 realizes almost ironically that what happened that led him to

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1 plead guilty, the conduct that led him to plead guilty, his  
2 association, if you will, with Abu Hanza and the hole Glide  
3 incident in terms of these charges, the irony is not lost on  
4 him. He repeatedly goes back to this about how all those  
5 beliefs, those principles that kind of conduct that these other  
6 people clearly believed in and have fostered on so many  
7 innocents in this country, in this world were completely at  
8 odds with his view of his own religion, their religion. He  
9 thinks they have bastardized it. He is offended. But again,  
10 he would constantly going back to how could I let this happen?  
11 How could I have been so naive? He's frequently expressed to  
12 Garret that he wishes to return to school, as he has to us.

13 But there's something in Ms. Pierce's letter which I  
14 think is very important in terms of the question that the Court  
15 is raising to what happened. She points out that upon his  
16 return to the United Kingdom when he's either finished his  
17 sentence here or if he is granted the treaty program and is  
18 allowed to serve his sentence in England, when he is finally  
19 released there are certain notifications provisions within  
20 United Kingdom's code apparently. And these are mandatory  
21 conditions imposed on individuals released from prison who have  
22 been convicted even abroad of terrorism offenses. This  
23 involves close monitoring for a substantial part of the  
24 remainder of their lives. This is not a supervised lease I  
25 think as you and I understand it to be. This is more of a



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1 combination of super supervised release and, perhaps, the child  
2 pornography types of sex offender protocols that take place  
3 upon conviction. Apparently, these people were monitored and  
4 under supervision for essentially the entire time that they  
5 remained in England, their lives.

6 The policy allows for close monitoring of individuals  
7 by the police in the Home Office Department. And since his  
8 diagnosis and treatment of schizophrenia exists what's key here  
9 is Haroon has developed a full appreciation for that and how  
10 that can affect him. He knows he needs to constantly receive  
11 treatment, not for fear that he is going to link up with  
12 al-Qaeda or ISIS or commit violence for his own piece of peace  
13 of mind, for his own ability to live life and to live life  
14 under the tenants of Islam as he believes it is and as he  
15 interprets it.

16 Your Honor, I mentioned earlier and I'll state again,  
17 in terms of specific deterrence, I would submit that under an  
18 analysis of 3553 a quarter of his life detained to point, I  
19 believe it's 11 years now which is still I believe less than  
20 150 months that we request, is more than enough in terms of any  
21 need for specific deterrence as to him.

22 In terms of general deterrence however, your Honor, I  
23 at least suggest the following thought. I believe I have  
24 accurately depicted his conduct for these two crimes. And if  
25 that is his true conduct, what kind of message is sent to the

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1 world if for conduct which again, I would submit is minimal?  
2 Someone receives still the maximum available sentence in this  
3 case 20 years for this conduct, and isn't possible that the  
4 interpretation will be by so much of this world that what he's  
5 being punished for is his religious belief, specifically, his  
6 belief that there is a tenant in the Quran which requires  
7 training? I understand there's other aspects to this conduct  
8 but I do raise this because I believe it's a valid question  
9 and, obviously, it takes me back to my position that what is a  
10 reasonable sentence in this case and not in any way more than  
11 necessary would be 150 months.

12 And yet the government eloquently with great care have  
13 outlined to this Court what it believes is its justification  
14 under 3553 for the guideline sentence of 20 years to be the  
15 sentence imposed. Even though it is ten years after Booker and  
16 we know the guidance of how sentencing is supposed to take  
17 place and what the guidelines are supposed to be, I still fear  
18 that it seems like it's almost a policy from that office that  
19 regardless of the crime and certainly in a terrorism crime, the  
20 only possible sentence has to be the guideline sentence which  
21 here, of course, is the statutory maximum. But I fear that  
22 what it then forces the government to do and has done here is  
23 in an effort to justify that conclusion, in an effort to  
24 justify a 20-year sentence a guidelines sentence what is  
25 warranted under 3553, there is a mischaracterization of the

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1 conduct and again a total disregard of context and motivation  
2 to the point that it leaves the Court with the question imposed  
3 initially this morning, Who is this young man?

4 I submit to your Honor this young man is not who the  
5 government has described. This young man is a man who did the  
6 conduct that we've outlined, that you you've heard from other  
7 individuals including doctors. We could have brought in people  
8 from the BOP who would also tell you about him. He sits before  
9 this Court in braids because he makes friends with a brother  
10 from Harlem, Dominicans from the South Bronx, everyone. It is  
11 almost like this child-like wide-eyed curiosity of just wanting  
12 to see for himself about so much people, cultures, everything.  
13 But one thing that is not present in this man, your Honor, I  
14 submit to you, is violence in any form especially in the name  
15 of a religion that he holds so dearly. Thank you, your Honor.

16 THE COURT: Thank you, Mr. Quijano.

17 Mr. Stansbury, you're looking at me.

18 MR. STANSBURY: I'm because I made a promise to you  
19 and I just want to respond extremely briefly.

20 THE COURT: All right. Then, Mr. Quijano, if you want  
21 that respond to Mr. Stansbury that will be fine. Just let me  
22 know.

23 MR. QUIJANO: Thank you, your Honor.

24 MR. STANSBURY: And I really will keep this brief. I  
25 wasn't going to respond until I heard a couple of things by Mr.

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1 Quijano that I feel that obligated to respond to. And this is  
2 the idea particularly that he's being punished for his  
3 religious beliefs. Mr. Quijano is doing a fantastic job. I  
4 know on behalf of his client but to paint this man as a  
5 passivist is I think a complete distortion of truth. The  
6 idea -- and I don't have the exact quote in front of me -- but  
7 the idea that he was not a man of violence is completely and  
8 utterly contradicted by his actions. If you not a man of  
9 violence you don't go to set up a training camp where that's  
10 the specific purpose. If you not a man of violence you don't  
11 go to one of the most notorious training camps on the planet  
12 for one of the most violent and destructive organizations on  
13 the planet, al-Qaeda. So if anyone is stretching the facts,  
14 respectfully, and I believe it's Mr. Quijano.

15 The defendant's -- and I could go into more details  
16 about some of the things on his computer and so forth but I  
17 just, we strongly disagree with that characterization.

18 THE COURT: All right. Thank you.

19 I understand, Mr. Quijano, that you will not agree  
20 with the government, but is there anything else that you wanted  
21 to add?

22 MR. QUIJANO: No, your Honor. Thank you very much.

23 THE COURT: All right. Thank you.

24 Mr. Aswat, would you like to address the Court before  
25 sentence is imposed? I'm going to ask you to speak into the

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1 mic. So I'm going to have you sit there and not stand so that  
2 we can get a clear sound through the microphone.

3 THE DEFENDANT: Peaceful greetings to everyone. I  
4 would like to start by apologizing to the government and this  
5 Court for breaking the law of this country. I will also like  
6 to apologize to my family and friends for the distress I have  
7 caused them. During the past ten years I have had a lot of  
8 time to ponder and think over the reasons that have led me to  
9 be incarcerated. Initially, anger drove me to near insanity  
10 and depression. Then in 2008 I was admitted into Broadmoor  
11 Hospital. Here I began a positive phase in my life. I owe a  
12 lot of gratitude and thanks to Broadmoor for the treatment,  
13 care and activities they provided me. It was a road to  
14 recovery.

15 Overall, the experience of the last ten years has  
16 humbled me and prepared me to face the future. I have studied  
17 deeply holy books and have arrived to this conclusion. I have  
18 chosen patience over retaliation, forgiveness over enmity and  
19 peace over violence.

20 I am and always have been totally against harming  
21 innocent people and those who promote peace. There is a prayer  
22 I learned many years ago from the teachings of Prophet  
23 Muhammad, peace and blessings be upon him.

24 Oh, merciful Lord, I seek refuge with you for  
25 misguiding or being misguided, from humiliating or being

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1 humiliated, from oppressing or being opposed and from acting  
2 ignorantly or being treated ignorantly.

3 This prayer I used to cite regularly when I was young  
4 and it has a lot more meaning to me now than every. I've come  
5 to realize that crime does not pay. I look forward to a future  
6 where I can be with my family and hopefully find a wife and  
7 settle down. I hope to live a peaceful crime free life and  
8 promote nonviolence, reconciliation and peace. I hope to carry  
9 on with my studies and obtain a degree. I also hope to  
10 continue with my treatment for schizophrenia.

11 I pray to the supreme Lord to make me a person that  
12 establishes peace and safety for others and I seek refuge from  
13 making mischief, oppression and chaos. Amen. Thank you.

14 MR. QUIJANO: Your Honor, if I may, I neglected to  
15 make one request and I certainly understand the Court's usual  
16 view to any kind of recommendation to the BOP. However, we  
17 would ask for a recommendation that it be a facility at least  
18 on the east coast of the United States ideally close to the  
19 international airport where the family would be able to visit a  
20 little bit easier.

21 THE COURT: Thank you, Mr. Quijano.

22 Mr. Aswat, let me tell you how the Court arrives at  
23 its sentence. It's a very difficult task that a Court is faced  
24 with and I sit here as a representative of our society and have  
25 been appointed to fill this role and I'm guided in my decision

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1 by certain laws that we have relating to sentencing. They are  
2 the sentencing statute which your lawyer referred to as 3553(A)  
3 as the provision of it that relates to certain factors so the  
4 Court must take into consideration in sentencing a defendant.

5 And I also have to consult the guidelines. We've  
6 talked I think quite a lot about the guidelines and I have  
7 taken those into consideration but I'm not to assume that the  
8 guidelines are necessarily reasonable. I want to assure that  
9 your lawyer since he made the comment about the government's  
10 view being a guidelines view very frequently that the Court  
11 makes its own determination as to what the appropriate sentence  
12 is. And I have varied from the guidelines. I have gone up and  
13 I have gone down and I have certainly not followed the  
14 government's recommendation simply because it was a government  
15 recommendation. Nor have I followed a probation recommendation  
16 simply because it was a probation recommendation. Nor have I  
17 followed a defense recommendation simply because it's a defense  
18 recommendation. I'm tasked with evaluating myself a particular  
19 defendant in the context of a particular crime and in the  
20 context of who the Court deems that defendant to be based upon  
21 its best judgment at the time and also based on the Court's  
22 view as to how this case does impact potentially what your  
23 lawyer referred to as "general deterrence" sort of the bigger  
24 picture as to how similar crimes should be treated. So it's a  
25 very complex picture.

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1           At the heart that have picture, Mr. Aswat, is you and  
2       it's the Court's attempt to try to figure out for you what the  
3       right sentence is and what for our society the right sentence  
4       is. And it's a very difficult exercise, particularly, when --  
5       and it's not always the case -- there is so much of a  
6       difference between the picture that is drawn as to a particular  
7       defendant. Here, there are obviously very different views and  
8       I'll and do my very best to balance all of the interests which  
9       the Court is required to balance in coming up with a sentence.

10           I want to assure you that in no sense are you being  
11       sentenced by this Court for any religious beliefs. That would  
12       be wrong and that is not the basis of any sentence. It is  
13       based upon the crime that you committed and based upon the  
14       impact of that crime on our society and our views as to that  
15       crime and judgments about you with regard to that crime.

16           So I have to ask, how serious was the offense? I have  
17       to ask because of the factors under 3553(A), I have to ask what  
18       are your personal history and characteristics? That's what  
19       kind of person are you now and going forward and what kind of  
20       person were you at the time? And with that I have to come up  
21       with what is a sufficient but not greater than necessary  
22       sentence for you taking into consideration the guidelines and  
23       here taking into consideration the congressional intent that is  
24       spoken through the terrorism enhancement and spoken through the  
25       base offense level that has been placed upon the crime. I've



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1 already noted the tension between that and the statutory  
2 maximum but I need to take into consideration the congressional  
3 view. Our Congress is our people's view as to this crime. So  
4 in doing that I'm looking for what's just punishment for this  
5 offense, what is going to protect our society, what kind of  
6 sentence will promote respect for the rule of law.

7 But how have I done that for you? Well, it's  
8 certainly true that the offense is was quite a serious offense.  
9 It was not simply that you went to Glide as someone who would  
10 provide religious instruction because I think that if you used  
11 only those words, doesn't convey to our society what was going  
12 on, which is that there was a man who you, Mr. Aswat, who had  
13 spent three years -- your sentencing submission at page ten  
14 says 1997 you started with Abu Hanza -- three years with Abu  
15 Hanza, by his side doing whatever tasks you may have been doing  
16 however menial -- and I will accept that they were menial  
17 tasks -- but you were by his side and by his side you could not  
18 but have helped to have heard his statements to have heard his  
19 mission, to have heard what he was attempting to inspire others  
20 to do. I saw the videos of you in the connection with that  
21 trial where you were sitting with him on the dais. You weren't  
22 in the audience. You weren't behind the scenes. So while I  
23 don't know what was in your head at the time, I know to the  
24 degree that I need to know that you understood precisely who he  
25 was before you ever went to Glide. I'm not suggesting that you

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1 were him. You're not obviously him. You are Haroon Aswat.

2 But you are under no mistaken impression as to who he was.

3 And in going to Glide you accompanied Mr. Kasir and  
4 you knew who he was. He told you he was there. He told the  
5 group -- this is part of what the trial record demonstrated,  
6 that he was there to martyr himself, that he was there to bring  
7 destruction and he was certainly there to train others in  
8 violent jihad. And he displayed his frustration with being  
9 unable to do that in his words when Glide didn't work out and  
10 he went to Seattle.

11 So you were part of a group with Mr. Kasir and Mr. Abu  
12 Hanza that was a group that was not intent on peacefully  
13 discussing a religious view. It was a perversion of a  
14 religious view into something that could be used through  
15 addition to that of violence to achieve a particular end. And  
16 your role in connection to that I have to take very, very  
17 seriously because you were there to try to support  
18 psychologically and inspire psychologically through whatever  
19 channels you could the individuals who were going to conduct  
20 violent jihad or be trained in violent jihad.

21 So I do agree certainly with your lawyer who has done  
22 a stupendous job in bringing all of the various factors to bear  
23 hear for you, that the Court does need to sentence you with the  
24 mindset both of who you are today and who you might become but  
25 also understanding that the crime that was committed was a

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1 pre-9/11 crime. That's a crime of conviction. Of course there  
2 were events that were post-9/11 and that's important so that he  
3 thank we don't confuse today our views on certainly things with  
4 at the time. But we do know that pre-9/11 and at the time that  
5 these events occurred there had been the embassy bombings. We  
6 do know that at the time there was an attempt to have  
7 individuals engaged in violent jihad with the specific and  
8 directed intention of harming the west. So it's not as if 9/11  
9 was simply just the first moment when those views became clear.  
10 They were certainly clear in Mr. Abu Hanza's speech. That's  
11 certainly predated 9/11. There were just dozens of them in  
12 that regard during the period of time and directly the period  
13 of time that the events here had happened.

14 So I ask myself then what do we do with this series of  
15 events? And I then look at what happened after you left Glide,  
16 after you left Seattle, after you then separated yourself  
17 seemingly from Mr. Abu Hanza. And I tried to figure out what  
18 reasonable inferences to draw and Mr. Quijano has offered  
19 reasonable inferences on the one hand that you when you went to  
20 Afghanistan were simply being trained because that was an  
21 obligation to be trained and it was simply the fulfillment of a  
22 religious on obligation and no more and that even if -- let's  
23 put that aside -- by the time you went to South Africa you were  
24 engaged in a different life altogether. That is one series of  
25 inferences.

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1           There's another series of inferences that I must take  
2 seriously because I have to try to make a judgment for our  
3 society about you. And that series of inference is that you  
4 knew exactly what you were doing when you went to Afghanistan,  
5 that you were attempting to be trained and others were  
6 attempting to be trained in Afghanistan. Whether you call it  
7 "al-Qaeda", whether you call it "the base" in Arabic, whether  
8 you call it by a different name, whatever you call it, whether  
9 you call it at that time confusion with the Taliban, you went  
10 to the Al Farouq camp which was not simply about physical  
11 training or even hand-to-hand combat. It was also about  
12 explosive devices and about a very particular message. And  
13 then you left from there to South Africa. And by the way,  
14 there it is important to me that you did go through and  
15 interview with the Taliban to go to Al Farouq which is  
16 important because it indicates that you knew exactly where you  
17 were going I think as well. That's a reasonable inference that  
18 the Court needs to draw or can draw.

19           So I'm confronted with these reasonable inferences and  
20 I then ask myself, well, what were you doing in South Africa?  
21 Because if I truly knew what you were doing it might well put  
22 things in one direction or another. But there are only  
23 reasonable inferences that we can draw, ones of the reasonable  
24 inferences, ones that your lawyer has put forward. Those are  
25 supported, if you will, by the impression of Ms. Pierce in

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1 terms of a disassociation, if you will, from what she viewed as  
2 some sort of the typical behavior of others accused of crimes  
3 of terrorism.

4 But then there's the potential that you were sent on  
5 assignment, if you will. Is there any evidence of that? Zero.  
6 But we do know that your -- and so you not being sentenced for  
7 that but your computer we know continued to carry a variety of  
8 material. I don't know what to do with that period of four  
9 years. The computers back then to download all this  
10 information on, you would think you'd have to upgrade your  
11 computer at this time and you wouldn't have had the same  
12 computer in 2004 that you had in 1999. But do I know that? I  
13 don't know that. Why is that important to me? Because if you  
14 downloaded the stuff later on that's more important to me than  
15 if you downloaded it in 1999.

16 To the extent that there was any kind of inference  
17 that you were not the one who download files and they may have  
18 been downloaded by others I, specifically, do reject that as a  
19 reasonable inference. I think that the only reasonable  
20 inference is however that material got there it got there from  
21 you.

22 I don't disagree with Mr. Quijano that the material is  
23 available all over the Internet and I don't disagree with that  
24 at all or that some of it is not particularly earth shattering.  
25 But I also believe collectively it paints a picture of a very

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1 dangerous situation and somebody trying to get a hold of a  
2 variety of explosive devices that lead to a very dangerous  
3 mindset.

4 So I put all this together and I'm laying it out for  
5 you, Mr. Aswat, since at the end of the day you have to  
6 understand why and how I get here because it's your life. You  
7 are going to be the person who has to carry out the Court's  
8 sentence and to live with the Court's sentence.

9 So I then go to the picture of your mental illness.  
10 It's very important to the Court. It's a critical point for me  
11 because as I've expressed at the outset, I can't be sure who  
12 you -- in fact, none of us in this room except for you know who  
13 you are. And so we're making our judgments, our best judgments  
14 about you and if I'm wrong people could die. And that's a very  
15 heavy responsibility and very different when I have to make  
16 judgments for people where it may tend one way or the other and  
17 the result of a wrong judgment may mean one thing. I have  
18 inferences here that could pain you as a very dangerous man,  
19 although, I don't disagree that your primary impetus is based  
20 in a view of religion but so was Abu Hanza's. But if I knew  
21 for sure that it was in a purity of Islamic faith it would be  
22 different than a perversion of that.

23 So I with all of this go to your mental illness and  
24 think I do not want to have you released in our society more  
25 dangerous than you may be today. Let's assume today you're a

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1 dangerous man. That's still less dangerous than a dangerous  
2 man released after having had poor treatment for schizophrenia  
3 over the course of the next four or five years, right?  
4 Whatever you are today, that treatment must be maintained. And  
5 if you are not a dangerous man, I worry about treatment not  
6 going well for you and you becoming dangerous. Not because of  
7 who you might be right now but because have you become that by  
8 virtue of a spiral downwards. Even good people can become  
9 dangerous with untreated mental health issue, people who  
10 otherwise would not be violent if their mind was not in a  
11 unhealthy place.

12 So I do take into consideration your mental condition  
13 and I have certain facts on your mental condition that I know  
14 which is based upon the very extensive report. I have two  
15 reports. I've got a report from a U.S. Bureau of Prisons  
16 Analysis and review Of your condition and actually by seeing  
17 you and having you engage with them, as well as a much more  
18 extensive one from London. And I then put that all together  
19 and I think to myself the schizophrenia is real. It's  
20 something that is precarious. I don't say that because I think  
21 that you right now are in any way incompetent. Your words are  
22 quite clear. You're clearly competent. You're looking at the  
23 Court very clearly today. I have a high degree, in fact I have  
24 complete confidence that you entirely competent as you sit here  
25 right now.

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1           So the question for me is, what do I do with this  
2 whole picture? And it's something that I have struggled with  
3 because I also am mindful of your mother and father and their  
4 health conditions and I'm mindful of their age and I'm mindful  
5 that you've got a strong family who is back and who is there  
6 for you in England. And I'm also mindful that if you are  
7 incarcerated for a further period of time you will be getting  
8 out at approximately, well, anywhere between now and the age of  
9 47. So you would not in under any events be somebody who would  
10 have to spend their lifetime behind bars.

11           So on balance and having considered very carefully the  
12 other sentences and other terrorism cases and having evaluated  
13 what I could from those cases and from what I know about a few  
14 of those cases firsthand, it is my judgment that I am going to  
15 sentence you to 240 months total which is 120 months for Count  
16 Five and 120 months for Count Six.

17           I'm going to make a recommendation and in fact a  
18 requirement to the Bureau of Prisons which will be the first  
19 time I've ever ordered the Bureau of Prisons to do something  
20 like this which is that you be housed in a facility that has  
21 specialty psychiatric care. It is of the greatest importance  
22 to this Court that you receive the best psychiatric care that  
23 you can receive while you are here.

24           Now, if you can be housed in England, the Court would  
25 certainly support that. If there's going to be a treaty



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1 application to have you serve your time over there, I would not  
2 order that. But this transcript can be used to show that the  
3 Court is supportive of that. If you believe and I think there  
4 is good evidence to demonstrate that the treatment over there  
5 is something that has worked for you in the past, then that  
6 would be a very good reason for both the U.S. and the UK to  
7 consider that in connection with an ultimate housing  
8 recommendation.

9 There will be no supervised release because you are  
10 going to be deported. The Court has signed an order of  
11 judicial removal.

12 There is a \$200 mandatory special assessment which the  
13 Court does impose. And there will not be any financial  
14 penalty. The Court is not going to impose a fine. It is not  
15 going to impose forfeiture and there is no order of  
16 restitution.

17 I will say, Mr. Aswat, that I understand this is not  
18 the sentence that you would want today. It is the sentence  
19 that I believe I must impose for our society to try to balance  
20 the possibility that you might, in fact, be the person who went  
21 to Al Farouq knowing exactly what you were doing and who could  
22 do it again against the possibility that you could get out  
23 worse than you are now with your mental health and I have tried  
24 very hard to balance this and I do believe this is the right  
25 sentence under 3553(A).

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1           While it happens to be a guideline sentence the Court  
2           should note that if the guidelines were different the Court  
3           would still impose the same sentence.

4           Is there any legal or other reason why sentence should  
5           not be imposed as stated?

6           MR. STANSBURY: No, your Honor.

7           MR. QUIJANO: No, your Honor.

8           THE COURT: I do order sentence to be imposed as  
9           stated.

10          Mr. Aswat, you waived certain rights of appeal when  
11          you made your plea. However, you may have rights to appeal  
12          that remain. It is up to you and your lawyer to determine  
13          whether or not you have any basis for appeal. If you have a  
14          basis for appeal you should file and must file any notice of  
15          appeal within 14 days of your filing of the judgment of  
16          conviction. If you can't afford the cost of appeal you can  
17          apply to have those costs waived. That's called proceeding in  
18          forma pauperis. You have a right to do that.

19          The Court will make the recommendation it has made  
20          with respect to the psychiatric treatment. The Court does  
21          believe that that recommendation should outweigh any  
22          recommendation as to location. However, to the extent that  
23          there is an ability to have the psychiatric treatment occur  
24          either in the New York City area, metropolitan area or in a  
25          metropolitan area with direct access to Europe through a close

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1 by airport, I also recommend that that be done as well to  
2 facilitate family visits which would be an important part of  
3 the defendant's overall treatment.

4 Thank you. We are adjourned.

5 MR. STANSBURY: Your Honor, just one remaining issue.  
6 There are open counts in an underlying indictment, so we move  
7 to dismiss those.

8 THE COURT: The Court does dismiss the underlying  
9 count and the underlying indictment.

10 (Adjourned)